IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

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SUPREME COURT, U.S.

C. L. SWAIN :

Petitioner :

vs. : No. 75-811

JASPER C. PRESSLEY :

Respondent :

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF IN OPPOSITION OF RESPONDENT PRESSLEY

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BRIEF OF RESPONDENT PRESSLEY IN OPPOSITION

This brief is submitted on behalf of the respondent, Jasper C. Pressley, in opposition to the petition for a writ of certiorari filed by C. L. Swain, the superintendent of Lorton Reformatory. Mr. Pressley argues that this case, which involves a question of interpretation of a statute applicable solely to persons convicted by the Superior Court for the District of Columbia, was correctly decided by an eight-judge majority of the United States Court of Appeals for the District of Columbia Circuit sitting en banc. The decision of the court below was supported by normal and usual principles of statutory interpretation and reached a result that effectuated the intent of Congress. Mr. Pressley therefore submits that review by this Court would be inappropriate and that the petition for a writ of certiorari should be denied.

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Additional Constitutional and
Statutory Provisions Involved

28 U.S.C. § 2241 provides:

> (a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.
>
> (b) The Supreme Court, any justice thereof, and any circuit judge may decline to entertain an application for a writ of habeas corpus and may transfer the application for hearing and determination to the district court having jurisdiction to entertain it.
>
> (c) The writ of habeas corpus shall not extend to a prisoner unless --
>
> (1) He is in custody under or by color of the authority of the United States or is committed for trial before some court thereof; or
>
> (2) He is in custody for an act done or omitted in pursuance of an Act of Congress, or an order, process, judgment or decree of a court or judge of the United States; or
>
> (3) He is in custody in violation of the Constitution or laws or treaties of the United States; or
>
> (4) He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations; or
>
> (5) It is necessary to bring him into court to testify or for trial.
>
> (d) Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a State which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody

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> or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination. 1/

Article I, Section 9, Clause 2 (the Suspension Clause) of the United States Constitution provides:

> The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Article III, Section 1 of the United States Constitution provides:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

The Fifth Amendment to the United States Constitution provides in pertinent part:

> No person shall . . . be deprived of life, liberty, or property, without due process of law. . . .

The Sixth Amendment to the United States Constitution provides in pertinent part:

> In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.

Counterstatement of the Case

On May 11, 1973, Jasper C. Pressley, a prisoner at the Lorton Reformatory, filed a petition for a writ of habeas corpus in the United States District Court for the District of Columbia. Mr. Pressley's

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1/ Petitioners quote 28 U.S.C. § 2255 in their "Constitutional and Statutory Provisions Involved." While Section 2255 may or may not be helpful in interpreting Section 110(g) of the D. C. Code, depending upon the view this Court ultimately takes, Mr. Pressley disputes any suggestion that Section 2255 is in any way directly involved in this case.

sentence had been imposed pursuant to a 1971 conviction of larceny in the Superior Court for the District of Columbia. 2/ The petition he filed in the United States District Court alleged that he had been denied effective assistance of counsel at his trial in violation of his rights under the Sixth Amendment of the United States Constitution.

In the district court, the government pleaded 23 D. C. Code § 110(g) as a jurisdictional bar. The trial court dismissed the petition on the grounds that the "Court does not have jurisdiction over this matter, by virtue of 23 D.C. Code § 110(g)." 3/

Mr. Pressley appealed to the United States Court of Appeals for the District of Columbia Circuit, where his case was

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2/ On April 22, 1971, a jury sitting in the Superior Court for the District of Columbia, convicted Mr. Pressley of grand larceny (22 D.C. Code § 2201), and larceny from the District of Columbia government (22 D.C. Code § 2206). The charges arose from the disappearance of a government-owned typewriter from an office where Mr. Pressley was employed. On October 1, 1971, Mr. Pressley was sentenced to concurrent prison terms of 32 to 96 months on the grand larceny conviction and 20 to 60 months on the conviction for larceny from the District of Columbia government. Mr. Pressley appealed and his conviction was affirmed without opinion by the District of Columbia Court of Appeals. Mr. Pressley then collaterally attacked his conviction alleging ineffective assistance of counsel. His attack was denied by the trial court without a hearing, and the denial was affirmed by the District of Columbia Court of Appeals in an unpublished opinion. It was after this affirmance that Mr. Pressley filed his petition for a writ of habeas corpus in the United States District Court for the District of Columbia.

3/ Pet. A. at page 66a. "Pet. A." refers to the appendix filed in this Court with the petition for certiorari.

briefed [4/] and argued en banc. A majority consisting of eight of the nine judges who heard the case reversed the district court's dismissal, holding that 23 D.C. Code § 110(g) requires exhaustion of local remedies and thus is no bar to ultimate constitutional adjudication in the inferior Article III courts in the District of Columbia. Accordingly, the case was remanded for a hearing on the merits of the habeas corpus petition.

The government seeks a writ of certiorari in this Court.

Argument

The petition asserts that the Court of Appeals in this case ignored the literal meaning of the statute that was before it and thereby so radically departed from established norms of statutory construction as to warrant an exercise of this Court's discretionary review by certiorari. Examination of Judge Tamm's careful and extensive opinion for the eight-judge majority shows that the court below examined the context, history and implications of the statute in question and then, adhering to well-established principles of statutory construction, reached a reasonable interpretation of the statute's meaning. The interpretation adopted by the Court of Appeals gave full effect to the

4/ Though the government had not raised the issue in the district court or on appeal, the Court of Appeals sua sponte remanded the record in Mr. Pressley's case to the district court for a clarification of whether the district court had dismissed the petition because of any failure on respondent's part to exhaust his remedies in the local courts before filing in the district court. The district court responded to the remand by stating that it had dismissed the habeas corpus petition not because of the alleged jurisdictional bar of 23 D.C. Code § 110(g) but instead because of a failure of respondent to exhaust his local remedies. The exhaustion issue was then briefed in the Court of Appeals, and that court's opinion in this case found that respondent had in fact exhausted his local remedies. The government did not raise the issue of exhaustion in the district court; conceded the issue in the Court of Appeals; and does not seek to bring it before this Court by certiorari.

apparent intent of Congress and made the statute harmonious with the overall plan of the act of which it is a part.

A. The Result Reached by the Court of Appeals Was Consistent With the Legislative History and the Intent of Congress

The petition for certiorari states that the Court of Appeals so radically departed from traditional notions of statutory construction as to warrant review by this Court. In fact, it was the petitioner who argued for a radical interpretation of 23 D.C. Code § 110(g) in the court below. Having failed to show that the instant case is significant or unusual, petitioner asks this Court to redecide the question of statutory interpretation that he lost in the court below.

The petitioner argues that 23 D.C. Code § 110(g), which is a subsection of a statute creating a right to collateral attack by post-conviction motion in the Superior Court for the District of Columbia, should be read to bar the doors of the inferior Article III courts to Superior Court prisoners for ultimate review of their federal constitutional claims. The petitioner seeks to erect a grant of power to the Superior Court into an implied repeal of the jurisdiction of the inferior Article III courts in the District of Columbia to decide federal constitutional questions once local remedies have been exhausted.

The Court of Appeals, after the fullest consideration, rejected the petitioner's argument. The petitioner was not able to point to any persuasive evidence that the Congress intended to make such radical and unprecedented inroads into the traditional habeas corpus jurisdiction of the inferior Article III courts. That jurisdiction, which is nationwide, came into being as part of the Judiciary Act of 1789, [1 Stat. 73], and has remained undisturbed for 200 years.

In addition, the Court of Appeals declined to read 23 D.C. Code § 110(g) in a manner that would take it out of consonance with the aims and design of the act of which it is a part. Instead, the court chose an interpretation of the

statute that brought it into harmony with the objectives and plan of the new District of Columbia court system. The petitioner's suggested reading of the statute, while it can be reached by a hyper-literal reading of the words of the statute, seemed to the Court of Appeals not to be consonant with the intent of Congress when seen against the background of the context, history, and implications of the statute in question.

The whole act -- the District of Columbia Court Reform and Criminal Procedure Act, Pub.L. No. 91-368, 84 Stat. 473 ("Court Reform Act") -- is a broad plan to create in the District of Columbia an Article I court system completely equipped with the power to try criminal cases; to review them on direct appeal; to hear collateral attack by post-conviction motion; and to entertain writs of habeas corpus. Section 110 of Title 23 simply makes it clear that the Congress contemplated that post-conviction review of criminal cases in the new Superior Court would be by motion rather than by the more complex procedure of habeas corpus.[5/]

The particular statute in question here -- 23 D.C. Code § 110(g) -- is a subpart of the section of the Court Reform Act that establishes for the first time an explicit statutory procedure for post-conviction attack by motion in criminal cases in the new local Article I court system for the District of Columbia.

Subsection 110(g) was read by the Court of Appeals in this case to codify the doctrine of exhaustion of local

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5/ The motions procedure of Section 110, which only entails a motion in the context of an existing criminal case, is vastly simpler than habeas corpus which requires filing a new case, serving process and so on. However, Congress also provided for a plenary habeas corpus power in the local courts. 16 D.C. Code § 1901. Challenges to conditions of prison confinement, confinement by parents in domestic relations cases, confinement by other private individuals, and suits by prisoners held in lieu of bail and not yet convicted would be examples of cases appropriately litigated under the D. C. habeas corpus statute and not under the 23 D.C. Code § 110 motions procedure.

remedies, thereby insuring that the federal courts would not be faced with constitutional questions unless every effort had been made to resolve them in the context of the new local court system.

In reaching this conclusion, Judge Tamm's opinion examined the legislative history of the Court Reform Act and concluded that, far from supporting the petitioner's argument that Section 110(g) was intended to invade the traditional habeas corpus jurisdiction of the district court, the legislative history tended more to undermine petitioner's position. In fact, the legislative history and decisions of this Court showed that in passing the Court Reform Act Congress intended to create a dual system of local and federal courts that would parallel the relationship of the state and federal courts in almost all respects. Palmore v. United States, 411 U.S. 389, 408-09 (1973); Pernell v. Southall Realty, 416 U.S. 363, 367 (1974).

Of course, in the various states, the federal courts are open for adjudication of the constitutional claims of prisoners who have exhausted their remedies in the state court systems. The petitioner's suggested reading of the statute would significantly depart from the state/federal model by closing the District of Columbia inferior Article III courts to the same questions to which they are open in every other jurisdiction in the nation. To bring Section 110(g) into line with the balance of the Court Reform Act, the Court of Appeals concluded:

> The interpretation of section 110 most harmonious with this federal-state analogy is clearly appellant's, which would allow the district court to entertain petitions for collateral review in the same manner as district courts do for the fifty states. In fact, it would not be inaccurate to state that the district court's holding is flatly inconsistent with this congressional purpose. Nowhere is there any indication that the federal-state analogy was

> subject to certain jurisdictional exceptions or that the district court here would possess less jurisdiction than in other districts. In fact, 11 D.C. Code § 501 (1973) defines the civil jurisdiction of the district court, which includes habeas corpus, by initially stating that "[i]n addition to its jurisdiction as a United States district court." The only construction of section 110 consistent with this analogy is that Congress never intended to affect the district court's habeas jurisdiction. Pet. A. at p. 35a. (footnote omitted)

When the Court of Appeals turned to examine the legislative history of this particular section of the act, once again, rather than finding support for petitioner's argument, it found evidence to the contrary. It found that Congress had made no mention of any intention to make the collateral attack aspect of the new court system different from the state/federal analogy. The court found no mention of any Congressional intention to provoke a major change in the habeas corpus jurisdiction of the United States District Court for the District of Columbia. It found instead that Congress had characterized 23 D.C. Code § 110(g) as being modeled on 28 U.S.C. § 2255 "with only the necessary technical changes."[6/]

Congress did not go on to say what the changes were "necessary" for. But the court below reasonably assumed that the technical changes were necessary to bring this subsection

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6/ S. Rep. No. 91-405, 91st Cong., 1st Sess. 38 (1969). The petitioner tries to inflate the fact that the words of Section 110(g) and Section 2255 are mostly the same into an argument that therefore their meanings ought to be exactly the same. The Court of Appeals rejected this argument, not only for its formal illogicality, but also for the more important reason that it ignores the dramatically differing purposes of the two statutes. Section 2255 was designed to distribute the judicial business evenly over the whole federal court system. United States v. Hayman, 342 U.S. 205, 210-224 (1952). No parallel problem exists within the District of Columbia. See, Pet. A. at pp. 28a-30a.

into conformity with the scheme of the act as a whole. Thus, what legislative history there is supported the conclusion of the Court of Appeals. It would have been particularly unreasonable to assume that one slender paragraph of legislative history would signal a dramatic modification in the habeas jurisdiction of the inferior Article III courts, which has remained unchanged since 1789.

The scanty legislative history of Section 110 was in stark contrast to the furious debate in Congress provoked by attempts before and after the passage of the Court Reform Act to reduce the habeas corpus jurisdiction of the inferior Article III courts. See Pet. A. at pp. 38a-41a.

In line with the design of the Court Reform Act and with the legislative history of the whole act and subsection 110(g) in particular, the Court of Appeals found that the intention of Congress was to divide the judicial business of the District of Columbia so that the local courts handled local matters, such as the trial of local crimes, and the federal courts concerned themselves exclusively with federal matters. "Federal matters" appropriately included adjudication of federal constitutional questions raised by Superior Court prisoners who had exhausted their local remedies just as in the various states. There was simply no basis for deciding that Congress had intended anything else.[7/]

7/ Indeed, Judge Tamm was moved to remark:

> The Government argues that the legislative history reveals "that the United States District Court for the District of Columbia would no longer be burdened with so much business of a purely local nature, not that the court would henceforth have precisely the same jurisdiction." (footnote continued)

B. The Court of Appeals Followed Well-Established Principles of Statutory Construction

While generalized principles of statutory construction rarely solve specific problems, the reading of 23 D.C. Code § 110(g) adopted by the Court of Appeals is solidly grounded in the law of statutory construction. Petitioner is really arguing that the Court of Appeals departed from those selected principles of statutory construction that lead to his result.

The Court of Appeals followed the general rule that statutes should not be read so as to achieve incongruous results or so as to put one section out of harmony with the whole. As this Court said in another context in Ozawa v. United States, 260 U.S. 178, 194 (1922):

> It is the duty of this court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance, but if this leads to an unreasonable result, plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment, and inquire into its antecedent history, and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail. (citations omitted) We are asked to conclude that Congress, without consideration or recommendation of any committee, without a suggestion as to the effect, or a word of debate as to the desirability, of so fundamental a change, nevertheless, by failing to alter the identifying words (of the statute there in question), which section we may assume was continued for some serious purpose, has radically modified a statute always theretofor maintained and considered as of great importance. It is inconceivable that a rule in force from the beginning of the government -- a part of our history as well as our law, welded into the structure of our national policy, by a century of legislative and administrative acts and judicial decisions -- would have been deprived of its force in such a dubious and casual fashion. See, Pet. A. at pp. 41a-42a. 8/

The Court of Appeals applied the Ozawa guideline in rejecting petitioner's reading of the statute because that reading would have achieved a radical result without any clear statement of any intention on the part of Congress to do so. 9/

7/ continued

> Gov't Br. at 29 (emphasis added). We must reject this latter suggestion because we believe it flies in the face of clear legislative history and consistent contrary court interpretations. In fact, we are surprised that the Government seriously advances it when it even quotes from the Senate Conference Managers:
>
> > the Federal district court for the District of Columbia is to regain its rightful status as a Federal tribunal, devoted on a fulltime basis to Federal business, like all other United States district courts.
>
> Statement (of the Managers on the Part of the Senate Submitted Regarding the Conference Action Upon S. 2601, the President's Crime Legislation for the District of Columbia, 91st Cong., 2d Sess. 2 (1970) at p. 5). Pet. A., note 39 at p. 35a.

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8/ Justice Frankfurter wrote:

> Our problem is not what do ordinary English words mean, but what did Congress mean them to mean.

Commissioner v. Acker, 361 U.S. 87, 95 (1959) (Frankfurter, J., dissenting).

9/ Petitioner's "literal" reading would also have had other consequences that Congress gave no evidence of intending:

> 1) The language of 23 D.C. Code § 110(g) that petitioner argues would bar the United States District Court from hearing this habeas corpus petition is so broad ("shall not be entertained. . . by any Federal . . . Court") that, if read literally, it would also bar this Court from hearing a petition for an original writ of habeas corpus in this case. While this

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By petitioner's proposed reading of the statute, a part of the United States District Court's habeas corpus jurisdiction granted by 28 U.S.C. § 2241 was repealed by 23 D.C. Code § 110(g). This repeal would be by implication. Section 110(g) itself does not mention Section 2241, and Congress did not amend 28 U.S.C. § 2241 when it passed 23 D.C. Code § 110(g).

Of course, implied repeals are not favored, 1A Sutherland, Statutory Construction § 23.10 (4th ed. 1973), especially where the repeal would be of a jurisdictional statute. Lynch v. Household Finance Corp., 405 U.S. 538, 549 (1972). The Court of Appeals pointed out that this Court had recently held that:

9/ continued

> Court's original writ has been seldom exercised, nevertheless, it does exist. Ex parte Yerger, 75 U.S. (8 Wall.) 85 (1869). The petitioner presumably wants "any Federal Court" to be read "literally" to include the district court but not to include this Court.
>
> 2) Section 110, Title 23, by its terms applies only to those prisoners convicted in the Superior Court. By implication, persons imprisoned by the Superior Court but not yet convicted, such as those held in lieu of bail, can be heard in the Article III courts on habeas corpus. If Congress' sole intention was to reduce the number of local criminal cases that can ever find their way into the inferior Article III courts, it would have been anomalous to cut out some, but not all, of the district court's habeas jurisdiction without at least suggesting what distinction was made or why.
>
> 3) From any early date, the Supremacy Clause has been interpreted to mean that state courts cannot entertain habeas corpus petitions on behalf of those confined by the United States. Tarble's Case, 80 U.S. (13 Wall.) 397 (1872); Ableman v. Booth, 62 U.S. (21 How.) 506 (1859). However, the words "shall not be entertained . . . by any . . . State court . . . unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention" can be "literally" read to mean that a state court, on a showing of inadequacy or ineffectiveness, could grant the writ and set a prisoner of the United States free.

> "'this canon of construction (disfavoring implied repealers) applies with particular force when the asserted repealer would remove a remedy otherwise available.' Schlesinger v. Councilman, ____ U.S. ____, 95 S. Ct. 1300, 43 L.Ed.2d 591 (1975)." Pet. A. at pp. 30a-31a.

Petitioner's implied repeal argument seems particularly dubious in light of the fact that Congress extensively amended the balance of Title 28 to bring it into conformity with the Court Reform Act. See Pet. A. at pp. 32a-33a.

The Court of Appeals also followed the time-honored principle of statutory interpretation that requires that where the court is faced with competing readings of a statute, one of which raises substantial constitutional issues and the other of which does not, the court should avoid unnecessary constitutional adjudication. Pet. A., fn. 8 at p. 8a, citing United States v. Rumely, 345 U.S. 41, 45 (1953); Crowell v. Benson, 285 U.S. 22, 62 (1932); The Japanese Immigrant Case (Yamataya v. Fisher), 189 U.S. 86, 101 (1903).

The Court of Appeals concluded that any construction of the statute that cut off the right of those confined by the United States government to seek ultimate constitutional adjudication in the inferior Article III courts would raise troublesome constitutional questions, which are more fully discussed in the next section of this brief. These questions have been repeatedly recognized and referred to by this Court, but never squarely decided. The Court of Appeals declined to launch itself into such uncharted constitutional waters but instead followed the example of this Court in choosing the less constitutionally ramified course.

The decision of the Court of Appeals preserves the traditional habeas corpus jurisdiction and thereby makes no new law. A contrary decision by the Court of Appeals holding that Congress does have the power to remove the writ from the inferior Article III courts in the District of Columbia would have nationwide implications in terms of Congress' as-yet-undefined power to

modify the writ. Against this background, the disinclination of the Court of Appeals to tackle undecided constitutional questions seems particularly appropriate in the context of a statute of such limited application.

A review of the opinion of the Court of Appeals shows that the court adhered to well-established principles of statutory construction in reaching the result that it did.

B. Petitioner's Reading of the Statute Raises Substantial Questions of Constitutional Law Which Have Been Recognized But Not Decided By This Court

The contested statute, 23 D.C. Code § 110(g), is not the first statute passed by Congress that has been argued to have restricted the habeas corpus jurisdiction of the inferior Article III courts. But there is a constant and unmistakable thread running through this Court's opinions on the subject for the last hundred years: since the parameters of the writ protected by the Suspension Clause of the Constitution are difficult to discern, the question should be avoided where possible. Accordingly, this Court has always been careful to scrutinize the intent of Congress so as to be able to avoid confronting this troublesome constitutional question when it can be avoided consistent with that Congressional intent. The history of these Supreme Court cases is carefully analyzed in the opinion of the Court of Appeals, and the lesson carefully applied to the problem at hand.

Perhaps the most strikingly analogous precedent arose from a 1948 statute which, if read mechanistically, would have created an exclusive post-conviction remedy in the Article I military justice system and thereby cut off the inferior Article III courts' habeas corpus jurisdiction. The statute, 62 Stat. 639, would have made post-conviction rulings of the Article I military courts "final and conclusive" and "binding upon all . . . courts. . . of the United States." A wooden reading of those words would have prevented the Article III courts from further considering the constitutionality of detentions in the Article I

military courts. But this Court declared:

> We read the finality clause . . . as doing no more than describing the terminal point for proceedings within the court-martial system. If Congress had intended to deprive the civil courts of their habeas corpus jurisdiction, which has been exercised from the beginning, the break with history would have been so marked that we believe the purpose would have been made plain and unmistakable. The finality language so adequately serves the more restricted purpose [of exhaustion] that we would have to give a strained construction in order to stir the constitutional issue that is tendered. Gusik v. Schilder, 340 U.S. 128, 132-33 (1950) (footnote omitted).

Carefully adhering to the Gusik precedent, the Court of Appeals read Section 110(g), which petitioner argues achieves the same drastic result that was argued for in Gusik, in the same way this Court read the statute in Gusik -- as an exhaustion statute.

This Court has followed the same course in reading statutes that were argued to insulate decisions of the immigration and naturalization authorities from habeas review in the inferior Article III courts. The Japanese Immigrant Case (Yamataya v. Fisher), 189 U.S. 86 (1903); United States v. Jung Ah Lung, 124 U.S. 621 (1888); Chin Yow v. United States, 208 U.S. 8 (1908). In all of the cited cases, this Court rejected readings of the immigration statutes that would have cut off habeas and thereby raised thorny constitutional questions. The Court of Appeals considered and followed these immigration cases.

Finally, this Court's reading of 28 U.S.C. § 2255 was considered and applied by the Court of Appeals. When Section 2255 was enacted, it was attacked as an unconstitutional derogation of the inferior Article III courts' habeas corpus jurisdiction. Hayman v. United States, 187 F.2d 456 (9th Cir. 1951). However, when the case came before this Court, the statute was construed

in a way that avoided the constitutional question. United States v. Hayman, 342 U.S. 205 (1952). This Court held that the post-conviction motion procedure prescribed by 28 U.S.C. § 2255 could pass constitutional muster only if its reach were exactly commensurate with that of habeas corpus. Finding that Section 2255 was exactly commensurate with habeas corpus, this Court upheld the statute's constitutionality. Once again, this Court adopted a reading of the statute that avoided a collision with the Suspension Clause.

Since Hayman, this Court has continued to read Section 2255 so that the constitutional problem was avoided. See, Sanders v. United States, 373 U.S. 1, 13 (1963), where this Court pointed out that in Hayman it had "avoided the constitutional question by holding that Section 2255 was as broad as habeas corpus."

Faced with explicit recognition by this Court that there are substantial undecided constitutional questions in this area, the Court of Appeals correctly decided that it could not brush these troubles aside, as the petitioner in this case does. Instead the court below identified these problems and appropriately avoided them consistent with the intention of the legislature.

The constitutional right that Mr. Pressley asserts is unique in our jurisprudence. The power to entertain writs of habeas corpus is nowhere affirmatively granted in our Constitution. The Suspension Clause merely protects from interference a power that is assumed to exist. This power is the power to review the legality of confinement and, Mr. Pressley argues, it inheres in every inferior Article III court.

Mr. Pressley asserts the right of every person[10/] confined by the authority of the United States to test the constitutionality of his confinement in the inferior Article III courts once he has first exhausted whatever other remedies he may have. This Court has never been forced to determine the exact limits of the rights protected by the Suspension Clause. Mr. Pressley submits that his case, involving a statute of limited local application, is not an appropriate vehicle for such a momentous decision, which can be appropriately avoided while at the same time giving full effect to the apparent intention of Congress.

10/ In addition to the more obvious category of criminal prisoners, the right to a writ in the inferior Article III courts extends to persons detained by the military, Burns v. Wilson, 346 U.S. 137 (1953); persons inducted into the armed forces, Oestereich v. Selective Service, 393 U.S. 233, 235 (1968); reservists ordered to active duty, Linsalata v. Clifford, 290 F. Supp. 338 (S.D.N.Y. 1968); persons detained by the immigration and naturalization authorities, including not only citizens but also resident aliens about to be deported, Ng Fung Ho v. White, 259 U.S. 276 (1922), and friendly aliens seeking to enter this country, Kwong Hai Chew v. Colding, 344 U.S. 590 (1953); persons tried and convicted by territorial courts, Maldonado v. Delgado, 345 F. Supp. 993 (D.C.P.R. 1972); Rivera Escute v. Delgado, 439 F.2d 891 (1st Cir. 1971); persons tried and convicted in Indian tribal courts, Colliflower v. Garland, 342 F.2d 369 (9th Cir. 1965); persons committed to federal mental hospitals, Stewart v. Overholser, 87 U.S. App. D.C. 402, 186 F.2d 339 (1950); and persons subject to interstate extradition proceedings, Roberts v. Reilly, 116 U.S. 80 (1885). If the petitioner is correct, United States citizens convicted of crimes by the Superior Court for the District of Columbia would be the only persons excluded.

Conclusion

This case presents none of the usual considerations that move this Court to grant certiorari.[11/] Examination of the opinion of the Court of Appeals demonstrates that the statute was thoughtfully read in conjunction with the intent of Congress and established principles of statutory construction; the right to be heard on habeas corpus in the inferior Article III courts, if such a right exists, was preserved; and the case was correctly decided. Therefore, the petition for a writ of certiorari should be denied.

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11/ Of course, this is not a case in which there is likely to be, nor is there, a split of authority among the inferior courts. Nor does this case present a question affecting large numbers of cases. The petitioner's statistical argument, presented in footnote 10 at page 18 of the petition for certiorari, is subject to varying interpretations. If the total number of defendants who appealed their Superior Court convictions in the first eleven months of 1975 was 120, then the number of prisoners who would have constitutional questions appropriate for federal review would be even less.